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Ex Parte

November 27, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: CC Docket No. 01-338

Dear Ms. Dortch:

Last month, representatives from BellSouth met with staff from the Competition Policy Division of the Wireline Competition Bureau to discuss the need for UNE loop and transport relief in connection with the above referenced proceeding. *See* Section 1.1206 Letter from W.W. (Whit) Jordan, Vice President - Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-338 (Oct. 15, 2002). During the course of BellSouth's presentation, Commission Staff asked BellSouth to address several issues: (1) whether a separate impairment analysis is required for the special access service market; (2) whether Commercial Mobile Radio Service ("CMRS") cell sites are distinguishable from a wireline customer's premises; (3) special access pricing trends in areas where BellSouth has received special access pricing flexibility; (4) whether pricing flexibility was predicated on the availability of UNEs; and (5) whether competitive local exchange carriers ("CLECs") are able to access competitive access providers ("CAPs") in BellSouth central offices.

This follow-up *ex parte* written presentation is intended to provide the information requested.

(1) A Separate Impairment Analysis Is Necessary for the Special Access Service Market.

A. The Act Requires Service-Specific Analyses. Section 251(d)(2), as written and as interpreted by the appellate courts, requires the Commission to undertake a service-specific impairment analysis. The Commission may not impose unbundling requirements "detached from any specific markets or market categories."[1] The Commission, in its *UNE Remand* and *Line Sharing Orders*, had found that because "[d]ifferent types of customers use different services . . . . it is appropriate for us to consider the particular types of customers that the carrier seeks to serve"[2] and that "it is appropriate to consider the specific services and customer classes a requesting carrier seeks to serve when considering whether to unbundle a network element."[3] The Commission next found a statutory basis for this analysis in its *Supplemental Order Clarification,* finding the Act to be reasonably construed to allow the Commission to "consider the markets in which a competitor 'seeks to offer' services and, at an appropriate level of generality, ground the unbundling obligation on the competitor's entry into those markets in which denial of the requested elements would in fact impair the competitor's ability to offer services."[4] The Court of Appeals, in turn, found this to be "essential and compelling reasoning."[5]

These Commission determinations are consistent with the Supreme Court's admonition that the Commission must "apply some limiting standard, rationally related to the goals of the Act" in determining which elements should be unbundled,[6] are compelled by the D.C. Circuit's earlier instruction that the Commission employ a more granular, market-specific approach in determining impairment under the Act,[7] and are vindicated by the Court's direct

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1 *United States Telecomm. Ass'n v. FCC,* 290 F.3d 415, 426 (D. C. Cir. 2002) (*"USTA"*).

2 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket Nos. 98-147 and 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3738, ¶ 81 (1999) (*"UNE Remand Order"*).

3 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, *Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98*, 14 FCC Rcd 20912, 20929, ¶ 31 (1999) (*"Line Sharing Order"*).

4 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9595, ¶ 15 (2000) (*"Supplemental Order Clarification"*).

5 *Competitive Telecomm. Ass'n v. FCC,* No. 00-1272 , 2002 U.S. App. LEXIS 22407 at *9-*10 (D. C. Cir. Oct. 25, 2002) (*"CompTel"*), citing *Supplemental Order Clarification,* ¶15.

6 *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 391-92 (1999).

7 *USTA*, 290 F.3d at 428.

observation in *CompTel*: "The Commission [was] clearly correct that *Iowa Utilities Board* required it to limit its former all-encompassing interpretation of the necessary and impair language" of the statute.[8] Indeed, the *CompTel* Court observed that the FCC's authority to "make distinctions that were based on regional differences or on customer markets," which it earlier found in its *USTA* decision, demonstrated that the Act allowed "restrictions keyed to a specific 'service' of the requesting carriers."[9] Because unbundling "imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities,"[10] unbundling beyond the impairment standard established by the Act is unauthorized and contrary to the public interest.

Thus, the *CompTel* decision lays to rest any doubt that section 251(d)(2) permits the Commission to undertake a service-specific impairment analysis before mandating the unbundling of a network element for use in the provision of the particular service a requesting carrier "seeks to offer."[11] In rejecting any legal argument that the Act "bars such service-by-service distinctions," the Court noted that the Act "seems to invite an inquiry that is specific to particular carriers and services."[12] As BellSouth demonstrates in its Comments and Reply Comments in this proceeding, the Commission's earlier impairment findings are properly interpreted, consistent with the statute, as service-specific and confined to wireline local exchange service only.[13] They should certainly be read that way prospectively.

B. The Exchange Access Market Is Separate and Distinct from the Local Exchange Market. In the *Supplemental Order Clarification* upheld by the *CompTel* decision, the Commission set out the statutory basis for distinguishing the markets:

> The exchange access market occupies a different legal category from the market for telephone exchange services; indeed, at the highest level of generality, Congress itself drew an explicit statutory distinction between those two markets.

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8 *CompTel* at *12.

9 *Id.* at *9-*10, citing *Supplemental Order Clarification,* ¶15.

10 *USTA,* 290 F.3d at 427.

11 *CompTel,* 2002 U.S. App. LEXIS 22407 (upholding FCC restrictions on the use of Enhanced Extended Links for the provision of local service only).

12 *Id.* at *8-*9.

13 *See* BellSouth Comments at 5-6, 28-29 (filed April 8, 2002) (arguing that the purpose of section 251 is to facilitate competition in telephone exchange service markets; the Commission's "rapid introduction of competition in all markets" factor should be modified to be consistent with section 251 to read "the rapid introduction of competition in the relevant local market for telephone exchange service" and, as modified, be given great weight), 46-59, *passim* (because 251 provides for limited unbundling of ILEC network elements to facilitate competition against ILECs in wireline local exchange service, the Commission must take into account the type of service a requesting carrier seeks to offer; no such impairment analysis has been undertaken for wireless carriers and no impairment can be shown for wireless carriers); BellSouth Reply Comments at 62 (filed July 17, 2002) (advocating service specific impairment analysis in context of wireless carrier's access to UNEs).

> [citation omitted.] Even though the exchange access market is legally distinct from the local exchange market, we must determine whether the markets are otherwise interrelated from an economic and technological perspective, such that a finding that a network element meets the "impair" standard for the local exchange market would itself entitle competitors to use that network element solely or primarily in the exchange access market. Unless we find that these markets are inextricably interrelated in these other respects, it is unlikely that Congress intended to compel us, once we determine that a network element meets the "impair" standard for the local exchange market, to grant competitors access – for that reason alone, and without further inquiry – to that same network element solely or primarily for use in the exchange access market.[14]

This market distinction has been upheld, and the Commission has not determined that the local exchange and exchange access markets are so interrelated from an economic and technological perspective that a UNE in one market may be accessed as a UNE in another market. The fact that competition is thriving in the exchange access market, particularly in the market for competitive special access services, belies any argument of impairment. The customer base for special access services is composed of a relatively few large entities located in geographically concentrated areas – with some 80 percent of ILEC special access revenues being generated from fewer than 25 percent of wire centers. These characteristics differ markedly from those of mass-market consumers of local exchange services. In addition, the facilities used to provide special access services are different from those used to provide local exchange services to individual consumers, typically comprising higher capacity unswitched circuits. Consequently, the nature of the special access customer base enables competitors to address a large portion of the market through a targeted investment.

C. Network Elements That Meet the Impair Standard for the Local Exchange Market May Not Be Accessed For Use in the Exchange Access Market Without a Finding of Impairment in the Exchange Access Market, Which Cannot be Made. As demonstrated above, the competitive special access services market is separate and distinct from the local exchange services market. It follows that the Commission must conduct a separate impairment analysis focusing on the special access services marketplace before it can authorize requesting carriers to utilize any UNEs, including combinations of loop and transport UNEs, for the provision of such services. The record before the Commission demonstrates that no such finding of impairment can be made.

Facilities-based carriers are collocated in most major wire centers serving large special access customers. A good indicator of this is the percentage of ILEC special access revenue qualifying for pricing flexibility, given that collocation and alternative transport are triggers for such relief. Revenue figures for BellSouth reflect the fact that, based on MSAs where pricing flexibility has been granted by the FCC, 69% of its special access revenues qualify for Phase II relief. Indeed, non-ILECs have captured at least one-third of the special

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[14] *Supplemental Order Clarification,* 15 FCC Rcd at 9594-95, ¶ 14.

access market nationwide.[15] This evidence of widespread competitive entry belies any possible claim of impairment.

What is more, there can be no possible claim for unbundling with respect to special access installations that already exist. There exists no justification for permitting conversion of in-place special access services to UNEs simply to grant any requesting carrier – whether a CLEC, IXC, or CMRS provider – a discount on the purchase of those facilities.[16] Cost differences alone cannot support a finding of impairment, particularly considering the robustly competitive nature of the long distance markets. Where competition is thriving without the use of UNEs, there can be no impairment consistent with the Act.

Furthermore, in conducting an impairment analysis regarding the special access services market, the Commission must consider whether the IXC/CLEC is impaired without access to any UNE, not just loop-transport UNE combinations. The special access services market has existed for years prior to the adoption of the Act, and is highly competitive. For carriers to proclaim impairment if they are unable to receive UNE pricing for the very services that have been in place for years prior to implementation of the Act and that have allowed competition to thrive since the corporate divestiture of AT&T violates all sense of reason. Thus, based upon the evidence in this record, no impairment can be justifiably found for the special access services market.

Requests for permission to utilize combined loop-transport UNEs, or even individual, stand-alone UNEs, to substitute for special access services indisputably fall into the category of unauthorized and publicly harmful unbundling, for which no finding of impairment can be made. The past two decades have seen tremendous growth in the competitive (non-ILEC) provision of dedicated access services. The Commission has declared that such developments must be taken into account in conducting an impairment analysis.[17] Indeed, the history of deregulatory initiatives targeted at special access offerings – from authorizing competitive entry[18] to implementing pricing flexibility[19] – conclusively establish that special access services occupy a unique and distinct market separate from that for local exchange services.

Finally, and for the sake of argument, were the Commission to make a finding of impairment with respect to the provision of special access services by carriers, it cannot order the availability of UNEs in the special access services market without considering the impact of

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15 *See* 2002 UNE Fact Report, Appendix L, attached to BellSouth Comments, CC Docket 01-338 (filed April 5, 2002).

16 *See Iowa Utils. Bd.*, 525 U.S. at 390.

17 *Supplemental Order Clarification*, 15 FCC Rcd at 9596, ¶ 16.

18 *In the Matter of Expanded Interconnection with Local Telephone Company Facilities; Amendment of Part 69 Allocation of General Support Facility Costs*, CC Docket Nos. 91-141 and 92-222, *Report and Order and Notice of Proposed Rulemaking*, 7 FCC Rcd 7369 (1992).

19 *Pricing Flexibility Order*, 14 FCC Rcd 14221.

such unbundling on the goals of the Act.[20] The Commission earlier identified five factors relevant to that consideration: the rapid introduction of competition in all markets; promotion of facilities-based competition, investment and innovation; reduced regulations; market certainty; and administrative practicality. The *NPRM* sought comment on whether and how these factors should be modified.[21] BellSouth has suggested that these criteria be modified and augmented by consideration of public safety, national security, and network integrity goals.[22] The inevitable impact on competitive, facilities-based access providers of a massive forced reduction in special access rates to UNE levels would be devastating. Foisting such a massive artificial devaluation of network investment upon already beleaguered companies would have major adverse consequences for the industry and the economy as a whole. The courts have made clear that section 251(d)(2) does not countenance, much less require, such a result.

Permitting the substitution of UNEs for special access would directly undermine the Act and the intent of Congress. Both the wisdom and the statutory basis for the Commission's decision not to permit such substitutions have been clearly upheld and endorsed by the *CompTel* Court. For all these reasons the Commission may not lawfully permit the use of UNEs or UNE combinations by requesting carriers for the provision of special access services. In order to effectuate the appropriate use of UNEs, it must maintain the usage restrictions it has previously determined to be appropriate and which have been upheld by the Court of Appeals, for all UNEs remaining after any Order issues in this proceeding.

(2) CMRS Cell Sites Are Distinguishable from a Wireline Customer Premises.

In response to BellSouth's comments regarding the availability of UNEs for the provision of wireless services, the staff requested that BellSouth provide rationale for distinguishing a CMRS cell site from a wireline local exchange customer's premises. Specifically the staff inquired whether a cell site is analogous to a customer's PBX.

A PBX can be easily distinguished from a wireless carrier's cell site. First, a PBX actually switches calls between the PBX end user lines and the public switched telephone network ("PSTN").[23] Conversely, a call originating from a wireless handset to a wireline

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20 *USTA,* 290 F.3d at 427-28.

21 *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, *et al.*, *Notice of Proposed Rulemaking*, 16 FCC Rcd 22781, ¶ 21 (2001) ("*NPRM*").

22 BellSouth Comments, CC Docket No. 01-338, at 27-28 (filed April 5, 2002). Public safety, national security and network integrity, along with the promotion of facilities-based competition, and reduced regulation, should be given priority consideration. Administrative practicality, and the rapid introduction of competition in the relevant local market for telephone exchange service, should be given great weight. The Commission should also consider what effect unbundling in the absence of impairment will have on markets in general, and on capital markets in particular.

23 The attached diagram demonstrates the difference between the PBX and the wireless cell site.

customer or even destined for another wireless customer, cannot be switched at the cell site. The cell site is merely a hardware component in the wireless carrier's own network. Calls must be switched at the mobile switching center ("MSC" or "MTSO"). Further, the wireless carriers have readily agreed that a cell site cannot switch a call and must function in tandem with the MSC.[24] According to AT&T and VoiceStream n/k/a T-Mobile, "the base station itself cannot perform all of the functions necessary to switch calls between cell sites."[25]

The wireless carriers and those CLECs serving wireless carrier customers would have the Commission believe that the cell site is the equivalent of an end-user customer. However, the cell site cannot be considered an end-user customer premises. The cell site is essentially a router that directs calls to their appropriate switches and then ultimately to the termination point. The end-user customer premises contemplated in the definition of a local loop, for example, *is* the termination point. If the Commission is inclined to retain the definition of a loop as codified at 47 C.F.R. § 51.319(a)(1), the Commission must clarify to CLECs and wireless providers that an end-user customer premises cannot include a wireless carrier's cell site. Adopting the definition of "end user" as determined in the access arena as not including "carriers" as end users may assist in this determination.[26]

Similarly, BellSouth has suggested in its comments that the definition of transport not be broadened to include wireless services. In fact, if the definition of dedicated transport as set forth at 47 C.F.R. § 51.319(d)(1)(i) is left unchanged, the Commission, again, must clarify that facilities used to provide wireless services, whether purchased by CMRS providers or CLECs, do not fall within the confines of UNE transport. CMRS providers and CLECs routinely attempt to circumvent the current definition by merely designating a point of presence at a cell site in an effort to game the system and obtain transport at UNE prices. This type of arbitrage must be prevented by the Commission. A clarification that the Commission has made no determination of impairment for the wireless industry, or a specific finding of no impairment in the wireless industry, would prevent such improper manipulation.

As with the special access market, a separate impairment analysis must be conducted for the wireless market. The Commission has historically treated wireless carriers as a class separate and distinct from wireline carriers. Wireless carriers are governed by separate rules, regulations and licensing requirements.[27] Neither Congress nor the Commission has ever considered CMRS providers to be "local exchange carriers" with the full panoply of regulatory burdens associated with that status.

BellSouth has provided the Commission ample information to prove the wireless market must be considered separate and distinct from the wireline industry served by CLECs

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24 Petition for Declaratory Ruling by AT&T Wireless and VoiceStream Wireless Corp. at 20, CC Docket 96-98 (filed Nov. 19, 2001) ("AT&T/VoiceStream Petition").

25 *Id.*

26 47 C.F.R. § 69.2(m).

27 *See* 47 C.F.R. § 20.1 et seq.

and ILECs and to prove that the wireless providers are not impaired without access to UNEs.[28] Wireless subscriber growth and penetration are impressive statistics often boasted by the wireless industry itself.[29] With over 137 million subscribers, the wireless industry is a strong, vigorous market that has grown substantially under the current market conditions, demonstrating without doubt that the carriers are not impaired without access to UNEs. The economically motivated wireless carriers now seek to mock the impairment requirement by ordering services under the auspices of CLECs. Simply inserting a CLEC presence in the wireless network should not entitle wireless carriers access to UNEs. Wireless services – whether provided by CLECs or CMRS carriers – can be offered to consumers at rates competitive to ILECs' wireline services without access to UNEs.

Finally, as asserted in the context of special access, if the Commission were to make an impairment finding, it cannot order the availability of UNEs in the wireless arena without considering the goals of the Act. Congress intended to allow new entrants into the marketplace and to afford them access to an incumbent's network in order to promote and foster local competition that would ultimately result in competitive pricing between the incumbent and the new entrant. Wireless carriers are hardly the new entrants that Congress intended the Act to cover, as the industry has been in existence for nearly 20 years. Pricing by wireless carriers is becoming less expensive than traditional landline services, and the wireless substitution rates have increased dramatically. Thus, the wireless carriers, without access to UNEs, have proven themselves true intermodal competitors to wireline.

(3) BellSouth's Special Access Pricing Trends

A. Even Where BellSouth Has Instituted Limited and Modest Increases in Month-to-Month Special Access Pricing, Discount Alternative Pricing Is Available. Following the Commission's grant of pricing flexibility, BellSouth increased special access pricing only with respect to month-to-month (non-term) rates in some, but not all, metropolitan statistical areas ("MSAs"). BellSouth raised month-to-month rates only in its 26 "Full Service Relief MSAs" (MSAs where pricing flexibility was granted at both the carrier point of presence ("POP") end and the end-user end). *See* BellSouth FCC Tariff No. 1, Transmittal No. 608, (eff. 11/01/2001). The average month-to-month rate increase for all customers was approximately 2%.

All of the special access services for which pricing flexibility was granted (and which may be taken on a month-to-month basis, including in those MSAs where prices were raised) are also made generally available by BellSouth under term plans with rates substantially less than month-to-month rates. None of these term plans require a contract tariff. BellSouth has not increased any of its special access rates available under these term plans. These rates are

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[28] *See* BellSouth Comments (filed April 5, 2002) and Reply Comments (filed July 17, 2002) in CC Docket No. 01-338.

[29] CTIA's Wireless Industry Indices: A Comprehensive Report on CTIA's Annual Survey Results.

also set forth in section 23 of the tariff. Indeed, most (67%) of BellSouth's special access revenues derive from services purchased under these term plans.

BellSouth did not increase special access rates in the 12 "Limited Service Relief MSAs" (MSAs where pricing flexibility was granted at the POP end only). In fact, rates in the Limited Service Relief MSAs have been reduced in BellSouth's last two annual filings (2001 and 2002) and are equivalent to rates for MSAs without pricing flexibility. Indeed, BellSouth voluntarily and unilaterally reduced rates by approximately $4.6 million in these areas.

B. Contract Tariffs Provide Special Access Services at Market-Based Rates. BellSouth currently offers nine volume discount-based special access contract tariffs. Ten customers subscribe to these contract tariffs. Five of the contract tariffs were designed for small customers with purchasing volumes of $2 million to $40 million over the term of the contract; two of the contract tariffs were designed for medium-sized customers with term purchasing volumes between $40 million and $80 million while the remaining two contract tariffs were designed for large customers whose term purchases of special access services exceed $80 million. On average, BellSouth special access customers who enter into contract tariffs achieve discounts of 3% off of otherwise applicable tariffed rates.

BellSouth estimates that by the end 2002 it will have given contract tariff customers annual volume-based discounts amounting to approximately $9.5 million. These discounts are in addition to the term-based discounts available to customers. These customers will realize discounts of up to 4% of their Full Service Relief MSA annual revenues. The following example illustrates the impact of pricing flexibility ("PF") on one of BellSouth's largest customers, and specifically shows how the general availability of term pricing discounts mitigates BellSouth's modest rate increases instituted to cover the higher costs of serving month-to-month customers:

($000)	
-PF Contract Discounts:	$ 5,653
-Other Discounts (ACP, TSP, TPP)[30]:	161,716
-Annual Filing Discounts in Limited Relief Areas:	1,300
-Rate Increases in Sec. 23:	(3,382)
Net Discount Value in PF Relief MSAs:	$ 165,287 (36.5% of total revenue)

BellSouth's decision to institute modest and limited increases in its month-to-month special access rates in certain areas while maintaining the general availability of discounted term rates in all areas is a rational economic pricing strategy because it rewards customers who

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30 "ACP" stands for "Area Commitment Plan;" "TSP" stands for "Transport Savings Plan;" and "TPP" stands for "Transport Payment Plan." All are generally available under BellSouth's access tariffs in all MSAs.

contribute to lowering BellSouth's cost of service with lower rates and avoids regulatory rate distortion. In BellSouth's experience, month-to-month customers are the most expensive to serve due to greater churn and the consequent heavier demands on company resources such as sales operations, service order systems and operations, network systems, billing systems and the personnel and labor costs associated with those demands.

(4) Pricing Flexibility Was Not Predicated on the Availability of UNEs.

During our meeting the FCC staff indicated that some CLECs have taken the position that a grant of pricing flexibility for special access and dedicated transport services is conditioned on the existence and continued availability of UNEs. This is simply untrue as a matter of law. Neither the existence nor the availability of UNEs has any role as a "trigger" for pricing flexibility for special access and dedicated transport services. Indeed, in the Commission's 1999 *Pricing Flexibility Order* the Commission severed any relationship between the availability of UNEs and the availability of pricing flexibility, noting that "UNEs do not represent sunk investment in facilities used to compete with incumbent LECs in the provision of special access and dedicated transport services."[31]

Although UNEs are not a "trigger" for pricing flexibility, the *Pricing Flexibility Order* is directly applicable to the Commission's UNE transport analysis. The *Pricing Flexibility Order* provides for relief based on the presence of facility-based competition for Phase I relief and on a demonstrated lack of market power for Phase II relief. Phase II relief is based on the existence of sufficient competition such that an ILEC does not possess market power. These standards were sought by the CLEC community and are standards that have been met by BellSouth in most places throughout its region during the course of this triennial review.

As shown above, despite some modest increases where warranted by the costs of serving month-to-month customers,[32] real prices for the broad range of special access services as defined by the Commission and offered by BellSouth have declined since the Commission granted it pricing flexibility. Because the *Pricing Flexibility Order* correctly recognizes the difference between actual facilities-based competition alternatives and service provisioned through ILEC UNEs, because that *Order* has already established an economic rationale for a regulatory environment that rewards

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[31] *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*; *Interexchange Carriers Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers*; *Petition of U.S. West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket No. 96-262, *et al.*, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14274, ¶ 94 (1999) ("*Pricing Flexibility Order*"). The *Order* goes on to discuss channel terminations to end users in paragraphs 100-107, but there is absolutely no mention of UNEs.

[32] This is consistent, in any event, with the *Pricing Flexibility Order*'s recognition that when regulation goes away some prices may go up due to regulatory distortions. *Id.* at 14301, ¶ 155.

facilities-based competition and provides the potential to allow markets to operate without unwarranted regulatory intervention, and because BellSouth has successfully demonstrated that the markets for special access in specific geographic areas within its territories are so competitive as to warrant pricing flexibility, the Commission must not condition the existence of pricing flexibility on the existence of UNEs, but rather, and as a first step, must do away with any UNE or combination of UNEs that could be effectively used as a substitute for competitive special access services.

(5) CLECs Are Able to Access CAPs in BellSouth Central Offices.

The primary purpose of collocation is for a collocated telecommunications carrier to interconnect with BellSouth's network or to access BellSouth's unbundled network elements for the provision of telecommunications services. A collocated CLEC may elect to place its own transport facility into its collocation arrangement or it may lease transport from an alternative provider. At the collocated CLEC's option, and where technically feasible, BellSouth will also accommodate a microwave entrance facility. Alternatively, a CLEC can lease the necessary transport facilities from BellSouth.

In addition to the various transport options described above, BellSouth permits a CLEC to utilize spare capacity on an existing collocated telecommunications carrier's entrance facility within the same BellSouth premises. This would typically entail BellSouth splicing the requesting carrier's riser cable (which travels between the vault and the collocation space) to the spare capacity on the other carrier's entrance facility. In accordance with federal rules, BellSouth also provides for co-carrier cross connects ("CCXC") in its interconnection agreements. BellSouth permits a CLEC to interconnect via a CCXC between its virtual or physical collocation arrangements and those of any other collocated telecommunications carrier within the same central office. Both collocated carriers' agreements must contain the necessary rates, terms and conditions for CCXCs. If a competitive access provider ("CAP") is a collocated carrier in the same central office as another collocated carrier (whether the other carrier is a CAP or a CLEC), then the same co-carrier cross-connect rules and policy would apply; however, this can be accomplished by a simple amendment if the carrier's interconnection agreement has not already been amended to permit CCXCs.

BellSouth allows the CLEC to hire a BellSouth Certified Supplier to install the CCXC between its collocation space and that of another collocated carrier within the same central office. Such connections to other carriers may be made using either optical or electrical facilities. In cases where the CLEC's equipment and the equipment of the other carrier are located in contiguous caged collocations spaces, the CLEC has the option of using its own technicians to deploy CCXCs, using either electrical or optical facilities between the sets of equipment, and constructing its own dedicated cable support structure. Otherwise, the CCXC uses common cable support structure.

Another alternative for CLECs to share transport options is to utilize shared collocation arrangements in a Host/Guest arrangement. The Guest CLEC may utilize spare capacity on an existing collocated carrier's entrance facility (the Host) for the purpose of providing an

entrance facility to the Guest CLEC's collocation arrangement within the Host's arrangement in the same BellSouth premises. BellSouth will allow the splice, provided that the fiber is non-working fiber. The Guest CLEC must arrange with BellSouth for BellSouth to splice the Host's provided riser cable to the spare capacity on the entrance facility.

Consequently, by way of the CCXC, the CLEC has the ability to access the transport facilities of every other carrier collocated in that central office, whether owned or leased, including those of legitimately collocated competitive access providers. This is in addition to being able to arrange directly with a competitive access provider for the placement of facilities to its collocation space or arranging for splicing in the vault of its riser cable to another CLEC's transport facilities, as described above.

I am electronically filing this notice in the above referenced proceeding. Please call me if you have any questions.

Yours Truly,

W.W. (Whit) Jordan

cc: Tom Navin
Rob Tanner
Julie Veach
Jeremy Miller
Cathy Carpino
Daniel Shiman
Brent Olson
Kimberly Vander Haar